UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/2002/43
6 March 2002

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-eighth session
Item 9 of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Report on the situation of human rights in Afghanistan, submitted by Mr. Kamal Hossain, Special Rapporteur, in accordance with Commission on Human Rights resolution 2001/13

Executive summary

This report will reflect the impact on the human rights situation of the dramatic developments that have taken place since the sixth report was presented to the United Nations General Assembly on 8 November 2001. The prolonged externally supported armed conflict involving warring factions which had been the root cause of the deteriorating human rights situation was replaced by a totally new situation. The tragic events of 11 September 2001 in the United States brought Afghanistan into central focus as suspected links were reported to exist between the perpetrators of those events and certain elements in Afghanistan. Demands were made of the Taliban regime to turn over those elements and, upon their refusal, military operations by an international coalition led by the United States commenced on 7 October, aimed at apprehending those elements and targeting the Taliban regime which was seen as harbouring them.

The Special Rapporteur undertook an emergency visit to Pakistan (Islamabad) and the Islamic Republic of Iran (Tehran, Zahedan and Zabol) from 22 to 30 October 2001 in order to assess the impact of the military operations on the human rights situation. On 7 November 2001, the Special Rapporteur was invited to brief the Security Council under the Arria formula. He reviewed developments which in certain respects had aggravated the humanitarian crisis, but at the same time had created opportunity and space for Afghans to become active

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participants in bringing about fundamental change. The Special Rapporteur visited Kabul from 6 to 8 January and was able to meet the Chairman of the Interim Administration, with two Vice-Chairpersons, the Minister for Foreign Affairs and the Minister of the Interior. He was also able to review the human rights situation with the Special Representative of the Secretary-General, Lakhdar Brahimi. The Special Rapporteur visited Iran and the western part of Afghanistan (Herat) from 15 to 22 February 2002. He interviewed refugees in Mashhad and internally displaced persons in Maslakh. In Herat, he held consultations with the Governor of Herat, United Nations agencies, non-governmental organizations and civil society members.

Following their rout all over northern Afghanistan on 12 November, the Taliban forces there concentrated mainly in Kunduz Province, having failed in their attempt to withdraw to southern Afghanistan. On 12 November, the United Front launched an offensive on the Shomali front, north of Kabul, entering Kabul on 13 November without a battle, since the Taliban had already abandoned the capital city.

The Special Rapporteur in his report to the General Assembly and in the press conference following his presentation of the report made urgent appeals for compliance with international humanitarian law, in particular in relation to the treatment of prisoners. Grave concern was expressed by international human rights organizations at the deaths which occurred at the Qala-i-Jangi fort and the circumstances surrounding the reported uprising of prisoners and the ensuing operations. The President of the International Committee of the Red Cross in his statement at the Afghanistan Support Group Conference in Berlin on 5 December 2001 stated that "all persons who surrender are entitled to a humane treatment regardless, in the case of Afghanistan, of whether they are Afghan Taliban or foreign fighters. This was true of Kunduz yesterday and remains true for Kandahar in the future". He further urged all parties in Afghanistan and members of the international coalition to respect the provisions of the Geneva Conventions. The Special Rapporteur on 21 December referring to these expressions of concern urged that inquiries be held into those incidents by the authorities concerned and corrective action taken. He underlined that it was important that the international action against terrorism be viewed as a campaign to uphold the international rule of law and that forces engaged in that campaign should be seen as complying with international humanitarian law. He urged all concerned to keep this in view, especially since increasing numbers of prisoners were expected to be taken in the coming days. It remains important to ensure that captured fighters continue to be treated in accordance with the Geneva Conventions and that any question regarding their status be determined by a competent tribunal as envisaged by those Conventions. So long as military operations continue, the Afghan population needs to be protected against their destructive impacts.

The Bonn Agreement was signed on 5 December 2001 after nine days of negotiations involving delegations representing various Afghan groups. This Agreement, in acknowledging the right of the people of Afghanistan to freely determine their political future, and defining as its basic objective "the establishment of a broad-based, gender-sensitive, multi-ethnic and fully representative government", recognizes human rights to be the key feature of the framework for change. The leadership of the Interim Administration reaffirmed its commitment to human rights, recognizing that "the most important thing for human beings is human rights". The constitution should secure the rights of all Afghans so that all ethnic groups can live in harmony.

For human rights to be restored it was necessary "to disarm the country" and to collect arms which were held by many groups under different local commanders and to establish a national legal order based on human rights and the rule of law. The support of the international community was important.

The 23-year conflict has left the Afghan economy devastated. The overwhelming majority of Afghans struggle to survive in miserable conditions. They are among the poorest and hungriest people in the world. Mass unemployment, widespread lack of purchasing power and lack of infrastructure and institutions undeniably make Afghanistan one of the most difficult places on earth to live. It is imperative to undertake a massive programme of national reconstruction. The urgent need to respond to the plight of the Afghan people is complicated by an extremely volatile operating and planning environment.

The Tokyo Conference on Afghan Reconstruction (January 2002) was expected to respond to the reconstruction and development needs of Afghanistan on a scale commensurate to the magnitude of devastation. The Conference concluded with pledges of around US$ 4.5 billion over the next five years. The pledges revealed some critical gaps.

Resources are most urgently needed for recruiting and developing a national police force which would play a critical role in meeting the need for security of person and property. This is universally recognized by all sections of the Afghan people to be the number one priority. There are reports from different parts of Afghanistan that, in the absence of a nationwide law enforcement capability, violent crimes are taking place, some of which are reported to be ethnically motivated, resulting in cross-border refugee flows, and a number of them are reported to be directed against women. The need to develop and deploy a national police force and, while this is being done, to expand the International Security Assistance Force (ISAF) from the 5,000 committed to around 30,000 for deployment in different parts of Afghanistan cannot be overemphasized.

A key change which the transition aims to bring about is the restoration of the rights of Afghan women who had been the targets of systematic discrimination denying them access to employment, education and health services. That the process of change has begun is reflected in the reopening of schools for girls and women returning to their normal jobs. Immediate measures were recommended in the January 2002 report of the Secretary-General on discrimination against women and girls in Afghanistan to the Commission on the Status of Women and may be commended for consideration and action by the Interim Administration.

The Afghan people have been exposed for more than two decades to the arbitrary use of force, recurrent massacres accompanying changes of control over territory, arbitrary detention, cruel, inhuman and degrading punishment, arbitrary and drastic restrictions of freedom of speech, freedom of movement and freedom of association, gender discrimination and discriminatory treatment of minorities within an authoritarian structure of governance and have suffered systematic deprivation of economic, social and cultural rights.

The highest priority in the programme for restoration of human rights is to replace the rule of the gun by the rule of law. Nearly all Afghans accord the highest priority to security which necessarily connotes establishing an environment for peace, ending past conflicts,

respecting human rights and providing for conflict prevention. Strategic and sustainable improvement of human rights is seen as a prerequisite for durable peace in Afghanistan. Priority tasks include laying the foundation for impartial and effective law enforcement, and establishing an independent judicial system and a national human rights commission empowered to protect the rights of all Afghans.

An important question is the accountability of those who were responsible in the past for committing massacres and similar serious human rights violations. A critical national policy decision needs to be taken regarding the perpetrators of those violations. The experience of other post-conflict societies offers a range of options, including prosecution of the perpetrators, establishment of a truth commission, and/or lustration/disqualification of the perpetrator from electoral office and/or public service. The option, or combination of options, which would be appropriate to the circumstances of Afghanistan would call for a national policy decision. The policy considerations which would need to be considered include: preventing future violations, deterring potential violators, responding to concerns of and claims for justice for victims and their families, securing reparation/compensation for them, and the important objective of national reconciliation. These are clearly questions upon which the Afghans will need to deliberate within the framework of the Bonn Agreement in order to forge a national policy aimed at establishing enduring peace and an environment of security based on respect for human rights.

An integrated approach is imperative given the existing conditions in Afghanistan. The restoration of the rule of law, the protection of the right to life and personal security, the right to property, and the right to move freely and transport goods throughout the country are critically necessary for the economy to be regenerated, for agriculture to revive, for trade to resume, for markets to function, for employment opportunities to be promoted and for access to be afforded to housing, education and health facilities. The international community needs to commit itself, resolutely and with a sense of solidarity, to supporting the people of Afghanistan in meeting the challenge of national reconstruction which faces them.

I. INTRODUCTION

1. This is the seventh report of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Afghanistan. This report will reflect the impact on the human rights situation of dramatic developments that have taken place since the sixth report (A/56/409 and Add.1) was presented to the General Assembly on 8 November 2001. The prolonged externally supported armed conflict involving warring factions which had been the root cause of the deteriorating human rights situation was replaced by a totally new situation. The tragic events of 11 September 2001 in the United States brought Afghanistan into central focus as links were reported to exist between their perpetrators and certain elements in Afghanistan. Demands were made of the Taliban regime to turn over those elements and, upon their refusal, military operations by an international coalition led by the United States commenced on 7 October, aimed at apprehending those elements and targeting the Taliban regime which was seen as harbouring them. The President of the United States of America on 12 October 2001 declared that the war against global terrorism was not a war on the people of Afghanistan, stating that the Afghan people were victims of oppression and misrule and that there were very few places on earth that faced greater misery.

2. The Special Rapporteur had made an emergency visit to Pakistan (Islamabad) and to the Islamic Republic of Iran (Tehran, Zahedan and Zabol) between 22 and 30 October 2001 in order to assess the impact of the military operations on the human rights situation. In the addendum to his report to the General Assembly he reported on the impact of the air strikes that had resulted in significant internal displacement from the cities and the loss of civilian lives and property.

3. On 7 November 2001, the Special Rapporteur was invited to brief the Security Council (on the basis of the Arria formula). He had reviewed developments which in certain respects had aggravated the humanitarian crisis, but had at the same time created an opportunity and a space for Afghans to become active participants in bringing about fundamental change. He underlined that the United Nations was expected to play a vital role in facilitating a transition from war to peace and in enabling the Afghan people to engage themselves in an inclusive participatory process to devise and implement a comprehensive political plan. The aim of the political plan would be to restore a unified Afghanistan to all of its people within a framework which would restore their human rights, long denied to them, and fulfil their legitimate expectation to live in freedom and dignity in peace in a society where the rule of law would protect their lives and livelihoods against violence and the depredations of powerful warlords. He also urged the international coalition to keep its military operations under review in order to ensure that they complied with international humanitarian law and demonstrated that they were truly intended to uphold the international rule of law.

4. A particular matter to which attention both of the Security Council and the General Assembly was drawn was the urgent need for internal security arrangements under the United Nations umbrella to protect the civilian population in areas where the Taliban regime was likely to lose control. Past experience had shown that such loss of control over territory was invariably accompanied by massacres. It was therefore urged that all parties be warned against committing any form of summary execution or other human rights violations as no one could be expected to enjoy immunity as they had in the past.

5. The Special Rapporteur visited the Islamic Republic of Iran and the western part of Afghanistan (Herat) from 15 to 22 February, 2002. He interviewed refugees in Mashhad and internally displaced persons (IDPs) in Maslakh. In Herat, he held consultations with the Governor of Herat, United Nations agencies, non-governmental organizations and civil society members.

II. MILITARY AND POLITICAL DEVELOPMENTS

6. The assassination of Commander Ahmad Shah Massoud of the United Front on 9 September and the terrorist attacks on the United States two days later added a new dimension to action against the Taliban. Following Commander Massoud's death and an unsuccessful Taliban attack on the Farkhar Gorge on 12 September, the level of fighting between the warring sides declined significantly until, late in September, General Dostum's forces launched an offensive in Balkh Province, while other United Front forces went on the offensive in Takhar Province, north of Taloqan.

7. Military operations by the United States-led coalition forces commenced with intense air strikes on 7 October. The first week of precision engagement was conducted by night, targeting mainly air defence and command centres. This was followed by daytime flights, still with the same objectives but shifting to "search and destroy" tactics. Latterly, the United States-led coalition conducted strikes against concentrations of Taliban troops along the main confrontation line.

8. On 9 November, United Front forces under the command of General Dostum, Atta Mohammad and Commander Mohaqqeq pushed forward towards Mazar-i-Sharif and captured the city on 10 November. United Front forces launched simultaneous offensives along the main confrontation line in northern Afghanistan and in the areas of Khwajaghar, Farkhar Gorge near Taloqan and Eshkamesh in Takhar Province, and Chal, Baghlan, Nahrin and Pul-i-Khumri in Baghlan Province. The United Front successfully captured all of these areas, as well as Aibak (the capital of Samangan Province) and Bamyan Province as a result of the defection of Taliban commanders. General Dostum's troops continued on the offensive, taking the river port of Hairatan, north of Mazar-i-Sharif, and the city of Sheberghan, capital of Jowzjan Province. On 11 November they seized the capital of Faryab Province, Meymaneh. United Front fighters located on the islands of the Panj River captured both the district of Emam Saheb and the river port of Sher Khan in Kunduz Province.

9. Following their rout all over northern Afghanistan on 12 November, the Taliban forces there concentrated mainly in Kunduz Province, having failed in their attempt to withdraw to southern Afghanistan. Also on 12 November, the United Front continued to press forward, capturing Herat city and Ghowr Province.

10. On 12 November, the United Front launched an offensive on the Shomali front, north of Kabul, entering Kabul on 13 November without a battle, since the Taliban had already abandoned the capital city.

11. Taliban forces continued to retreat from various areas in the north and to concentrate in Kunduz, which was to be their last stronghold in the north. The Special Rapporteur in his report to the General Assembly and at the press conference following his presentation of the report made urgent appeals for compliance with international humanitarian law, in particular in relation to the treatment of prisoners. All parties were urged to refrain from any form of summary execution. In relation to Kunduz, the Special Rapporteur urged that every effort be made to achieve a negotiated surrender and that the prisoners captured be treated humanely. On 24 November, a surrender was negotiated of several hundred Taliban fighters from Kunduz. A substantial number of those who had surrendered were removed to the Qala-i-Jangi fort near Mazar-i-Sharif.

12. Qala-i-Jangi was to prove to be a disaster as a detention site. According to some eyewitness reports, an eruption of violence was sparked on 25 November in the course of questioning of some of the prisoners by two Central Intelligence Agency agents. A series of violent events involving the shooting of prisoners and the killing of one of the two CIA agents escalated into widespread violence. Reports spoke of a prisoner uprising and of military operations extending over three days involving massive use of force by coalition forces which included air strikes. These operations ended in the death of several hundred prisoners inside the fort. Over 200 were reportedly buried by the International Committee of the Red Cross. The President of the International Committee of the Red Cross in his statement at the Afghanistan Support Group Conference in Berlin on 5 December 2001 stated that "all persons who surrender are entitled to humane treatment regardless, in the case of Afghanistan, of whether they are Afghan Taliban or foreign fighters. This was true of Kunduz yesterday and remains true for Kandahar in the future". He further urged all parties in Afghanistan and members of the international coalition to respect the provisions of the Geneva Conventions.

13. Grave concern was expressed by international human rights organizations at the deaths which occurred in Qala-i-Jangi and the circumstances surrounding the reported uprising of prisoners and the ensuing operations. On 21 December the Special Rapporteur, referring to these expressions of concern, urged that inquiries should be held on the reported incidents by the authorities concerned and corrective action taken. He underlined that it was important that the international action against terrorism be viewed as a campaign to uphold the international rule of law and that forces engaged in that campaign should be seen as complying with international humanitarian law. He urged that all concerned should keep this in view, especially since increasing numbers of prisoners were expected to be taken in the coming days.

14. Even as the Taliban forces lost control over most of Afghanistan and the military operations were concentrated on areas where remnants of the Taliban forces and non-Afghan fighters were reported to be active, air strikes continued. Serious concern was expressed as civilian casualties were caused by some of these air strikes. A convoy of community leaders reportedly on their way to attend the inauguration of the Interim Administration in Kabul on 22 December was struck near Gardez (Paktia Province), resulting in over 60 deaths. Another air strike on 27 December in eastern Paktia province reportedly caused the death of about 40 civilians, wounding 60 and destroying 25 houses. On 9 January, an air strike in Qalai-Niazi north of Gardez caused the death of civilians, many of them members of a wedding party. The death toll ranged from 52 to 100. On 24 January in a ground operation in Uruzgan at night, there

were reportedly 21 civilian deaths and compensation was distributed, apparently acknowledging that these civilian casualties were the result of error, presumably owing to faulty intelligence. There are suggestions that malicious "tip-offs" are supplied in order to target enemies in personal feuds.

15. So long as military operations continue, the Afghan population needs to be protected against their destructive impacts. This will require constant reiteration of the need to comply with international humanitarian law so that maximum care is exercised to avoid civilian casualties and protect them from unexploded ordnance, which remains scattered throughout Afghanistan. At the same time, prisoners must be treated humanely. It is important to ensure that captured fighters continue to be treated in accordance with the Geneva Conventions and that any question regarding their status be determined by a competent tribunal, as envisaged in those Conventions. The conditions of detention of prisoners in various detention centres is a source of concern. Reports of outbreaks of disease and harsh conditions of detention in Sheberghan prison where several thousand prisoners are detained call for urgent measures to improve those conditions and for best efforts to be made to comply with the requirements of humane treatment. The Special Rapporteur had suggested that a visit to that prison be included in the programme of his proposed visit to Afghanistan in February, but weather conditions led to the postponement of the visit.

Political developments

16. Intensive high-level diplomatic activity parallel to the military operations which were causing the disintegration of the Taliban regime was aimed at devising a political alternative to the Taliban. The Secretary-General chaired a high-level meeting of the six plus two group at United Nations Headquarters on 12 November 2001. The ministers and other senior representatives of the six plus two endorsed the Secretary-General's proposal to convene an urgent meeting of the Afghan parties under the auspices of the Special Representative, Lakhdar Brahimi, and issued a joint statement in which they welcomed the central role of the United Nations in developing a political alternative to the Taliban regime. They pledged their continued support for the efforts of the Afghan people to find a political solution to the Afghan crisis and agreed that there should be established in Afghanistan a broad-based, multi-ethnic, politically balanced, freely chosen Afghan administration representative of the aspirations of the Afghan people and at peace with its neighbours. It was also underlined that such an administration must be able to meet the needs of the Afghan people and respect human rights, regional stability and Afghanistan's international obligations, including the suppression of trade in narcotics. The statement further welcomed efforts to create such an administration by Afghans, both from within Afghanistan and from among the Afghan diaspora.

Bonn Conference and Agreement

17. A conference was convened on 27 November 2001 near Bonn of delegations representing different Afghan groups including the Northern Alliance and exiled groups, (including one affiliated with the country's former King, Mohammad Zaher Shah). The Special Rapporteur spent a day in Bonn when he met the Special Representative of the Secretary-General and a number of participants. He conveyed to them the importance of making effective provisions in the agreement for the protection of the human rights of the Afghan

people. After nine days of negotiations, an agreement (the Bonn Agreement) was concluded on 5 December 2001 which was signed by 25 signatories on behalf of the Afghan participants and witnessed for the United Nations by the Special Representative of the Secretary-General.

18. The Bonn Agreement reaffirms the independence, national sovereignty and territorial integrity of Afghanistan. It acknowledges the right of the people of Afghanistan to freely determine their own political future. It establishes interim arrangements as a first step towards the establishment of "a broad-based, gender-sensitive, multi-ethnic and fully representative government". It further recognizes that some time may be required for a new Afghan security force to be fully constituted and functional, and therefore sets out security provisions in its annex I which envisages a request to the United Nations Security Council to consider authorizing the early deployment to Afghanistan of a United Nations-mandated force to assist in the maintenance of security for Kabul and surrounding areas. Such a force could, as appropriate, be progressively expanded to other urban centres and other areas.

19. The Bonn Agreement in its preamble affirms the determination to end the tragic conflict in Afghanistan and to promote national reconciliation, lasting peace, stability and respect for human rights in the country. Article II defines the legal framework by stipulating that existing laws would be applicable to the extent that "they are not inconsistent with the Bonn Agreement or with international legal obligations to which Afghanistan is a party". Article V (2) expressly states that the Interim Authority and the Emergency Loya Jirga shall act in accordance with basic principles and provisions contained in international instruments on human rights and international humanitarian law to which Afghanistan is a party. Annex II to the Agreement defines the role of the United Nations during the interim period. Inter alia, it provides that the Special Representative shall monitor and assist in the implementation of all aspects of the Agreement. It also states that the United Nations shall have the right to investigate human rights violations and, when necessary, recommend corrective action. It will also be responsible for the development and implementation of a programme of human rights education to promote respect for and understanding of human rights.

Human rights as a key feature of the framework for change under the Bonn Agreement

20. The Bonn Agreement, in acknowledging the right of the people of Afghanistan to freely determine their political future and defining as its basic objective "the establishment of a broad-based, gender-sensitive, multi-ethnic and fully representative government", recognizes human rights to be the key feature of the framework for change: political development to be based on the implementation of civil and political rights and economic reconstruction and development to be based on the progressive implementation of economic, social and cultural rights. Human rights, therefore, are central to the purposes and functions of the United Nations under the Agreement. It would thus be expected to integrate human rights fully into its humanitarian, reconstruction and political activities and to assist in the building of sustainable institutions of human rights, democracy and the rule of law.

Kabul consultations: Special Rapporteur's visit (6-8 January 2002)

21. The Special Rapporteur in the course of his visit to Kabul from 6 to 8 January (the third week in office of the Interim Administration) was able to meet the Chairman of the Interim

Administration, Mr. Hamid Karzai, the Vice-Chairman of the Administration and Minister for Women's Affairs, Dr. Sima Samar, the Vice-Chairman and Minister of Planning, Haji Muhammad Mohaqqeq, the Minister of Foreign Affairs, Dr. Abdullah Abdullah, and the Minister of the Interior, Mr. Mohammad Yunus Qanooni. He was also able to review the human rights situation with the Special Representative of the Secretary-General.

22. The Chairman and other members of the Interim Administration were conscious of the historic opportunity to rebuild Afghanistan anew, not only in physical terms but also to rebuild the institutions which would provide to the Afghan people the benefits of democracy, human rights and the rule of law. They all emphasized that the people yearned for security. That required building national capacity to replace the rule of the gun by the rule of law, which in turn required building up a national police force, for which resources were urgently needed. Importance was also attached to the International Security Assistance Force which is now available to assist with security functions in and around Kabul, and will be expanded to provide similar assistance wherever needed throughout the country. It was recognized that reconstruction must be viewed comprehensively so as to embrace political, social, human rights, institutional and cultural dimensions.

23. The leadership reaffirmed their commitment to human rights, recognizing that "the most important thing for human beings is human rights". The constitution must secure the rights of all Afghans so that all ethnic groups can live in harmony. For human rights to be restored it was necessary "to disarm the country", collecting the arms that were held by many groups under various local commanders and establishing a national legal order based on human rights and the rule of law. The support of the international community was important. The Interim Administration, which was committed to upholding the national interest, was ready to engage constructively with the international community in achieving the common objectives of peace and stability.

24. The Special Rapporteur underscores that all agreed that the programme of national reconstruction must be owned and driven by the Afghan people. The international community must facilitate and provide resources to enable the Afghan people to secure their national objectives. The signatories to the Geneva Accords of 1988 which had pledged to enable all segments of the Afghan people to rebuild the Afghan State through establishing a broad-based, multi-ethnic, truly representative government had failed to fulfil that pledge. After more than a decade, the Bonn Agreement was seen as an effective and credible commitment by the international community to support the Afghan people in their resolve to establish "a broad-based, gender-sensitive, multi-ethnic and fully representative government" within a unified Afghanistan.

III. THE CHALLENGE OF RECOVERY AND DEVELOPMENT

25. A massive programme of national reconstruction is an imperative. The situation faced by approximately 24 million Afghans in Afghanistan and the more than 4 million Afghan refugees living in neighbouring countries continues to be one of the most desperate in the world. The overwhelming majority of Afghans struggle to survive in miserable conditions. They are among the poorest and hungriest people in the world. The urgent need to respond to their plight is complicated by an extremely volatile operating and planning environment. The elements that

characterize that environment are: (a) a rapidly changing political setting; (b) variable security conditions; (c) limited physical access to many areas within the country owing to poor infrastructure, mountainous terrain and the threat of mines and unexploded ordnance; (d) an extremely limited absorptive and implementation capacity.

Human needs

26. Some features of the current situation faced by Afghans are summarized below.

27. Afghans have suffered an abysmal human rights situation for decades. There are particular concerns for children, women and minorities, as well as specific protection concerns faced by civilians as a direct result of military or other action.

28. Egregious acts of violence have been perpetrated against women. Women and girls have been excluded from educational opportunities and access to employment.

29. Half of all Afghan children suffer from chronic malnutrition, and one out of every four children dies before reaching the age of five.

30. There are some 4 million Afghan refugees of whom 80 per cent are women and children.

31. Approximately 6 million Afghans, including over 1 million IDPs and 4.7 million other vulnerable people, are in need of humanitarian assistance.

32. The maternal mortality rate is the second highest in the world with an estimated 16,000 women dying each year from pregnancy-related causes.

33. Afghanistan's grain production has fallen by more than 50 per cent in the past two years, its livestock herds are severely depleted and its irrigation systems extensively damaged.

34. Only 23 per cent of the population has access to safe water and only 12 per cent to adequate sanitation; 6 per cent of Afghans had access to electricity in 1993, one of the lowest rates in the world.

35. There are 2 telephones per 1,000 people (compared to 24 in Pakistan, 35 in Tajikistan and 68 in Uzbekistan).

36. The primary road network has seriously deteriorated - 1,700 km of the 3,000 km of roads needs rebuilding.

37. Fifty per cent of the urban housing stock has been destroyed or damaged in the major cities.

38. Widespread environmental degradation disproportionally affects the rural poor and women.

39. Three years of drought and the onset of winter have further eroded already stretched coping mechanisms. A fourth year of drought is now a possibility with the late onset of rain and snow.

40. Over 800 km^2 of land cannot be put to productive use because of contamination by landmines and unexploded ordnance (UXO), while 150 to 300 new casualties occur each month as a result of mine/UXO accidents. Information provided by coalition forces indicated that 244,420 "submunitions" were dropped in 103 submunition strike areas. According to initial ground assessments apparently 10 per cent (more than 24,000) have failed to explode and are lying in the ground and are potentially deadly. The current allocation of US$ 7 million to the United Nations mine action programme in Afghanistan is thought to be grossly inadequate. According to expert opinion, the budget would have to be doubled from $20 million to $43 million annually in order to respond to the new and more complicated additional task of UXO clearance.

41. The 23-year conflict has left the Afghan economy devastated. Agriculture, on which about 85 per cent of the population are directly dependent, has to recover from the effects of the prolonged conflict and four successive years of drought. Mass unemployment, widespread lack of purchasing power and lack of infrastructure and institutions undeniably make Afghanistan one of the most difficult places on earth to live.

Tokyo Conference

42. The Tokyo Conference on Afghan Reconstruction (January 2002) was expected to respond to the reconstruction and development needs of Afghanistan on a scale commensurate to the magnitude of the devastation. Estimates had placed the requirements at US$ 15 to 45 billion over a 10-year period. The Conference concluded with pledges of around US$ 4.5 billion over the next five years. The pledges revealed some critical gaps.

43. While there was a need to lay the foundations for the revival of the economy to meet long-term development needs, there is an urgent need for funds to enable the Interim Administration to meet immediate humanitarian and security needs. Without adequate resources, the Interim Administration risks losing credibility and being unable to extend its authority elsewhere in the country, thereby undermining the long-term chances of the peace process.

Effective law enforcement to protect human rights

44. Resources are most urgently needed for recruiting and developing a national police force which would play a critical role in meeting the need for security of person and property. This is universally recognized by all sections of the Afghan people to be the number one priority. There are reports from different parts of Afghanistan that, in the absence of a nationwide law enforcement capability, violent crimes are occurring some of which are reported to be ethnically motivated, resulting in cross-border refugee flows, and a number of them directed against women. A particularly disturbing incident was the assault on the Transport Minister at

Kabul airport in mid-February 2002, resulting in his death. The need to develop and deploy a national police force and, while this is being done, to expand the International Security Assistance Force (ISAF) from the 5,000 committed to around 30,000 for deployment in different parts of Afghanistan cannot be overemphasized.

Women's rights

45. A key change which the transition aims to bring about is the restoration of the rights of Afghan women, who had been the targets of systematic discrimination denying them access to employment, education and health services. That the process of change has begun is reflected in the reopening of schools for girls and women returning to their normal jobs. This was evident in Kabul and Herat. For the first time in five years, women throughout Afghanistan participated in university examinations. In Kabul, of the 3,000 people who took examinations for entrance to the university, 500 were women.

46. Even before 1979, Afghanistan was one of the poorest countries in the world with high maternal and child mortality rates and a very low literacy rate for women. Future plans and programmes for reconstruction and development of Afghanistan with particular emphasis on women's rights require an understanding of the country's past as well as its traditions and customs. Special attention should therefore be directed at the promotion and protection of the human rights of women and girls in Afghanistan, including the right to non-discrimination with regard to sex, age, religion, ethnicity, disability and political affiliation. Women's effective participation in civil, cultural, economic, political and social life should be promoted and protected throughout the country, including the right to life; respect for the right of women to work; the rights to education and to security of person; freedom of movement and association; freedom of opinion and expression; and the right to equal access to facilities necessary to protect their right to the highest attainable physical and mental health.

47. Immediate measures recommended to the Afghan Interim and Transitional Authorities by the Secretary-General in his report to the Commission on the Status of Women on discrimination against women and girls in Afghanistan (E/CN.6/2002/5 dated 24 January 2002) which may be commended for consideration and action by the Interim Administration include the following:

(a) To ensure full support for the participation of women in the Special Commission to convene the Emergency *Loya Jirga* and in the *Loya Jirga* itself;

(b) To support fully the activities of the Ministry for Women's Affairs;

(c) To ensure that all line ministries employ women, develop capacity to mainstream a gender perspective in their programmes, and that an inter-ministerial machinery is established to that end;

(d) To ensure that women are well represented as members of the Judicial Commission, the Civil Service Commission and the Human Rights Commission, and that a gender perspective is taken into consideration when developing the mandates of these commissions;

(e) To ensure that the work of the Human Rights Commission is underpinned by international human rights standards, including the Convention on the Elimination of All Forms of Discrimination against Women, and integrates women's rights in its mandate;

(f) To ensure a safe environment free from violence to facilitate women's participation and the return of refugees;

(g) To take urgent measures to repeal all edicts and orders that discriminate against women and to end all forms of discrimination against women;

(h) To study and analyse the impact on women and girls of the existing legal system, including with regard to family law, divorce, property and inheritance rights;

(i) To apply temporary special measures, including targets and quotas, targeted at Afghan women to accelerate the de facto equality of women and men in decision-making;

(j) To take steps towards ratifying the Convention on the Elimination of All Forms of Discrimination against Women, in accordance with the Beijing Platform for Action and the outcome document of the twenty-third special session of the General Assembly;

(k) To ensure the full participation of women in the assessment of short-, medium- and long-term priorities in all sectors.

IV. RECOMMENDATIONS

Overall strategy for promotion and protection of human rights

48. The highest priority in the programme for restoration of human rights would be to replace the rule of the gun by the rule of law. The consensus expressed by nearly all Afghans accords the highest priority to security which necessarily connotes establishing an environment for peace, ending past conflicts, respect for human rights and providing for conflict prevention. Among other specific measures and activities the United Nations could be expected to promote dialogue among parties with potentially conflicting interests, establish mechanisms for peaceful resolution of disputes and grievances, promote tolerance and policies to reduce divisiveness and institute programmes for peace education. The strategic and sustainable improvement of human rights is seen as a prerequisite for durable peace in Afghanistan. Priority tasks would include laying the foundation for impartial and effective law enforcement and establishing an independent judicial system and a national human rights commission empowered to protect the rights of all Afghans.

49. Pressing human rights issues include the need to address the deep-rooted discriminatory attitudes and practices that serve to marginalize women and minorities. Effective action would need to be taken to curb lawlessness, arbitrary military or police action and abuses that may undermine the protection of at-risk civilians including IDPs, refugees and others.

50. Specific steps would need to be taken to assess existing capacity, to provide support to the Interim Government and to the general public to improve understanding of human rights, and

to build the capacity necessary to give effect to the human rights provisions of the Bonn Agreement, and in particular to provide necessary assistance in setting up the Human Rights Commission and in dealing with human rights aspects of other commissions such as the Judicial Commission.

51. The Afghan people have been exposed over more than two decades to the arbitrary use of force; recurrent massacres accompanying changes of control over territory; arbitrary detention; cruel, inhuman and degrading punishment; arbitrary and drastic restrictions of freedom of speech, freedom of movement and freedom of association; gender discrimination; and discriminatory treatment of minorities within an authoritarian structure of governance, and have suffered systematic deprivation of economic, social and cultural rights. Fear was pervasive, life and personal security were precarious, redress for violations illusory, and the right to food, access to education and health, and access to employment were denied to women and men. But the situation for women was greatly aggravated by the special edicts which prohibited women from access to employment, access to health services and access to education, which could be regarded as systematic persecution of women. The civil war and the militarization of society fostered a culture of violence against women and girls which is likely to continue to affect them during the transitional period. Special measures need to be taken to protect women and girls from forced marriages and all other forms of violence and sexual abuse. Special recommendations relating to measures to improve the overall situation regarding women's rights are set out in paragraph 47 above.

52. The basic task of restoring human rights to the Afghan people is thus especially challenging and complex. Afghanistan has all along been a party to the principal human rights instruments. No reporting, however, took place and there was no meaningful compliance with the obligations assumed under them. The Bonn Agreement commits the transitional process and its mechanisms to fulfil those obligations and to rescue Afghans from the appalling situation they have endured for so long. The past environment of fear, anxiety and insecurity is to be replaced by one which offers a sense of security and hope and restores human dignity.

53. At the outset it needs to be recognized that just as prolonged conflict was identified as the root cause of the crisis of human rights, the single biggest threat today, the most formidable barrier to the realization of human rights, is scarcity of resources. The resources pledged in Tokyo need to be delivered urgently, and additional resources need to be mobilized. Innovative initiatives might include possible public-private partnerships and a trust fund aimed at providing resources for the protection and promotion of human rights.

54. The transitional process needs to address the challenge presented by "warlords" and the negative legacies of the past when the future constitutional dispensation comes up for consideration. The establishment of a government, based on free and fair elections, being the goal, the electoral process must be free from intimidation and influence by the wealthy and powerful. Provisions may need to be made for electoral disqualification (lustration) of major perpetrators of atrocities and gross violations of human rights. Such disqualifications may also apply to persons who may be found to have violated provisions which may be made in any code of conduct prohibiting maintenance of private armies, or acquiring wealth through trafficking in drugs or women, smuggling, or the commission of similar major economic crimes.

55. A related question is that of the accountability of those who were responsible in the past for committing massacres and similar serious human rights violations. Over a period of more than two decades the conflict that devastated Afghanistan was marked by massacres of civilian populations, rape, abduction of women and children, and the destruction of property including irrigation systems, fruit orchards and other means of subsistence. A critical national policy decision needs to be taken regarding the perpetrators of those violations. This decision would need to be reflected in the emerging constitutional and legal order.

56. The experience of other post-conflict societies offers a choice of options ranging from prosecution of the perpetrators, to establishment of a truth commission, to lustration/disqualification of the perpetrators from electoral office and/or public service. The option or combination of options which would be appropriate to the circumstances of Afghanistan would call for a national policy decision. The policy considerations which would need to be considered include: preventing future violations, deterring potential violators, responding to concerns of and claims for justice of victims and their families, reparation/compensation to them, and the important objective of national reconciliation. These are clearly questions upon which the Afghans will need to deliberate within the framework of the Bonn Agreement in order to forge a national policy aimed at establishing enduring peace and an environment of security based on respect for human rights.

57. An integrated approach is imperative given the existing conditions in Afghanistan. The restoration of the rule of law and the protection of the right to life and personal security, the right to property, and the right to move freely and transport goods throughout the country are critically necessary to enable the economy to be regenerated, for agriculture to revive, for trade to resume, for markets to function, for employment opportunities to be promoted and for access to be afforded to housing, education and health facilities.

58. The international community needs to commit itself resolutely and with a sense of solidarity to supporting the people of Afghanistan in meeting the challenge of national reconstruction which faces them.